IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.MC.No. 2219 of 2007()

CP.8/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA
CRIME NO.654/01 OF ANGAMALY POLICE STATION

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PETITIONER: ACCUSED NO.1 & 2

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1. VARKEY, S/O OUSEPH,
KACHAPPILLY HOUSE, ATTARA KARA,
MOOKKANNOOR VILLAGE, ANGAMALY.

2. BIJU, S/O OUSEPH,
KACHAPPILLY HOUSE, ATTARA KARA,
MOOKKANNOOR VILLAGE, ANGAMALY.

BY ADV. SRI.K.SUNILKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI.M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2219 OF 2007

Dated this the 11th day of July, 2007

ORDER

The petitioners face indictment in a prosecution under Sec.55 of the Kerala Abkari Act. The petitioners were not arrested in the course of investigation. Investigation is complete. Final report has already been filed also. Cognizance has been taken and committal proceedings has been registered before the learned Magistrate. The petitioners, it is submitted, had received summons from the learned Magistrate to appear in the committal proceedings. The petitioners appeared through their counsel and applied for condoning their absence. The learned Magistrate rejected the applications and issued non-bailable warrants of arrest against the petitioners. The petitioners now find warrants of arrest issued by the learned Magistrate chasing them.

2. According to the petitioners, they are absolutely

innocent. Their inability to appear earlier before the learned Magistrate was not wilful or deliberate; but was on account of reasons beyond their control. The petitioners, who had received summons to appear before the court, are willing to appear before the learned Magistrate and seek regular bail. But they apprehend that their applications for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

3. The learned Magistrate is bound to consider the applications for bail on merits, in accordance with law and expeditiously. The decisions in **Sukumari v. State of Kerala** (2001 (1) KLT 22) and **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339) make the position crystal clear that the applications must be considered on merits, in accordance with law and expeditiously by the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits, in accordance with law and expeditiously. Sufficient general directions on this aspect have already been issued. No special or specific directions appear to be necessary. Every court must do the same.

4. In the result, this Crl.M.C. is dismissed; but with the

observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

5. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge